

MAURICE HAMBLIN,)
)
Plaintiff,)
)
v.) No. 4:11CV2127 JCH
)
MICHAEL J. ASTRUE,)
Commissioner of Social Security,)
)
Defendant.)

This matter is before the Court on its own motion. The Court previously ordered plaintiff to show cause why this action should not be dismissed for lack of subject matter jurisdiction. Plaintiff has responded to the order, but plaintiff's response fails to demonstrate that subject matter jurisdiction exists. As a result, the Court will dismiss this action without prejudice under Rule 12(h)(3) of the Federal Rules of Civil Procedure.

In his complaint and attached exhibits, plaintiff represents that he received an unfavorable decision from an administrative law judge (“ALJ”) on May 20, 2010. Plaintiff does not allege that he sought review of the unfavorable decision from the Appeals Council. Nor does plaintiff allege that the Appeals Council reviewed the decision despite his failure to seek review.

The Social Security Act's requirement that there be a "final decision" made by the Commissioner after a hearing is a prerequisite which must be met before a district court has subject matter jurisdiction to review a claim. Weinberger v. Salfi, 422 U.S. 749, 763-64 (1975). "[A] 'final decision' by the SSA is rendered when the Appeals Council either considers the application on the merits or declines a claimant's request for review, and not simply when the ALJ issues its decision." Pollard v. Halter, 377 F.3d 183 (2nd Cir. 2004); Garrett ex rel. Moore v. Barnhart, 366 F.3d 643, 647 (8th Cir. 2004).

Because there is no indication that the Appeals Council considered the unfavorable decision by the ALJ, it appears that plaintiff never received a "final decision" from the Commissioner. This Court, therefore, does not have subject matter jurisdiction over the complaint.

Accordingly,

IT IS HEREBY ORDERED that this action is **DISMISSED** for lack of subject matter jurisdiction.

An Order of Dismissal will be filed with this Memorandum and Order.

Dated this 19th day of February, 2012.

/s/Jean C. Hamilton
JEAN C. HAMILTON

UNITED STATES DISTRICT JUDGE